## REMARKS

Claims 9-12 and 23-26 have been allowed. Claims 15-22 and 27-30 remain with claims 27-30 being new. The Advisory Action rejected Claims 15-22 under 35 U.S.C. §103(a) as being obvious over *Aberg* (WO 00/55717) in view of *Werkhoven* (WO 99/59097) and *Tomita et al.* (JP 409167188).

As the Examiner is aware, the hard question is whether the combination is based upon hindsight from the present teaching rather than what would be obvious apart from the present teaching to a person of ordinary skill in this field.

As set forth in *In re Kahn*, 441 F.3d 977, 987-988 (Fed. Cir. 2006):

> The motivation-suggestion-teaching test picks up where the analogous art test leaves off and informs the *Graham* analysis. [*Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).]
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> To reach a non-hindsight driven conclusion as to whether a person having ordinary skill in the art at the time of the invention would have viewed the subject matter as a whole to have been obvious in view of multiple references, the Board must provide some rationale, articulation, or reasoned basis to explain why the conclusion of obviousness is correct. The requirement of such an explanation is consistent with governing obviousness law. . . .
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> A suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as "the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. . . . The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be *some* articulated reasoning with *some* rational underpinning to support the legal conclusion of obviousness. This requirement is as much rooted in the Administrative Procedure Act [for our review of Board determinations], which ensures due process and non-arbitrary decisionmaking, as it is in §103.

As can be appreciated, the more that the cited references must be modified to meet the outstanding claims, the more likely that an unintended issue of hindsight may drive the rejection. This is particularly true for an Examiner who is attempting to provide a diligent effort to ensure that only patentable subject matter occurs. The difficult issue is to step back from the zeal of the examination process and to appreciate that the Patent Examiner has to wear both hats of advocating a position relative to the prior art, while at the same time objectively rendering in a judge-like manner, a decision on the patentability of the present claims.

In this environment, applicant has provided four new claims for consideration which is believed to more than adequately meet the standards set forth in the *In re Kahn* case cited *supra*.

As can be appreciated the automatic display of the pop-up screen is used to save the user time when the user is trying to access information associated with a setting item.

The Advisory Action cited *Aberg* for displaying a menu which contains a plurality of items which the user can select, *Werkhoven* for a control unit operable to measure a length of time and displaying the information in a pop-up window, and *Tomita* for the display of a pop-up window.

*Aberg*, *Werkhoven*, and *Tomita* do not teach or suggest "a control unit measuring a time period from when the setting item is initially highlighted, wherein when the measured length of time exceeds a first predetermined length of time, the control unit automatically activates the display unit to indicate a setting value associated with the highlighted setting item whereby a user is not required to enter a further instruction to the operation unit."

In *Aberg*, the user not only has to highlight the item, but the user also has to give another instruction to show the setting value associated with the highlighted setting item. *Aberg* also does not teach or suggest that this will appear in the form of a pop-up.

In *Werkhoven* a web browser automatically displays a pop-up window using a setting value obtained elsewhere from the web browser and therefore the setting value is not specifically associated with the highlighted item in the display. In fact, there is no highlighted setting item in the web browser at all.

Also, *Werkhoven* fails to teach or suggest displaying a pop-up window on the same display. In *Werkhoven*, the pop-up window displays on a new display than the one the user is currently viewing. Thus, if a person was browsing the Internet, the display is the browser's window and the pop-up would show up on a separate window. In contrast, in the present invention, the pop-up would show up on the same display.

In *Tomita* the screen does not automatically display a pop-up window and there is no highlighted setting item. The user has to manually tap on a body part as the process is not automatic. Furthermore, the body part is not highlighted already.

Tomita also fails to teach "after a second predetermined length of time, the control unit removes from the display unit the indication of the setting value associated with the highlighted setting item." In *Tomita*, the screen will not close without further user action.

Furthermore, *Werkhoven* fails to teach "the control unit only once shows on the display unit the indication of the setting value associated with the highlighted item and only once removes from the display unit the indication of the setting value associated with the highlighted item when the user has only entered the instruction for causing the display unit to highlight the highlighted item." In *Werkhoven*, the pop-up screen opens and closes more than once without further user action.

Thus, even if *Aberg*, *Werkhoven*, and *Tomita* were hypothetically combined, the present invention is distinguishable from the hypothetical combination.

Finally, there is no motivation to combine *Aberg*, *Werkhoven*, and *Tomita* together. While *Aberg* may be a reference teaching the ability to save the user time when operating a mobile phone, *Werkhoven* is a reference for wasting the user's time by bogging him down with advertisements when the user is browsing the Internet. Thus, an inventor seeking to solve the problem of saving the user time when operating a mobile phone would hardly look to an invention which wastes the user's time while the user is browsing the Internet for inspiration. Furthermore, *Tomita* only seeks to save the user time when searching for medical information rather than saving the user time when operating a mobile phone. Thus, an inventor seeking to solve the problem of saving the user time when operating a mobile phone would hardly look to an invention which saves the user time when searching for medical information for inspiration.

We believe the case is now in condition for allowance and early notification of the same is requested.

If the Examiner believes a telephone interview will help further the prosecution of this case, it is respectfully requested he contact the undersigned attorney at the listed phone number.

I hereby certify that this correspondence is being transmitted via facsimile to the USPTO at **571-273-8300** on November 8, 2006.

By: Sharon Farnus

Signature

Dated: November 8, 2006

Very truly yours,

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